



*SM* PATENT  
Anten Docket No.: P-12550-DIV  
Finnegan Docket No.: 06148.0017-03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
Gary K. MICHELSON )  
Serial No.: 08/480,461 ) Group Art Unit: 3733  
Filed: June 7, 1995 ) Examiner: M. Brown  
)  
For: INSTRUMENTATION FOR THE SURGICAL  
CORRECTION OF HUMAN THORACIC AND  
LUMBAR SPINAL DISEASE FROM THE  
LATERAL ASPECT OF THE SPINE  
(AS AMENDED)

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97(c)

Pursuant to 37 C.F.R. §§ 1.56 and 1.97(c), applicant brings to the attention of the Examiner the documents listed on the attached PTO 1449. This Information Disclosure Statement is being filed after the events recited in Section 1.97(b) but, to the undersigned's knowledge, before the mailing date of either a Final Action or a Notice of Allowance. Under the provisions of 37 C.F.R. § 1.97(c), this Information Disclosure Statement is accompanied by a fee of \$240.00 as specified by Section 1.17(p).

Copies of a portion of the listed documents were previously submitted in a prior application, serial no. 08/394,836 filed February 27, 1995, now U.S Patent No.

5,772,661 upon which applicant relies for the benefits provided in 35 U.S.C. § 120. The

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11/24/1998 AIRBRIEF 00000100 08480461  
202-408-4000  
02 FC:126

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second portion of listed documents identified on form 1449 at pages 12 through 16 are attached. Applicant respectfully requests that the Examiner consider the listed documents and indicate that they were considered by making appropriate notations on the attached form.

The present application Serial No. 08/480,461 is a divisional of 08/394,836, now U.S. Patent No. 5,772,661, which is a continuation-in-part application of 08/074,781, now U.S. Patent No. 5,484,437, which is a continuation-in-part application of 07/968,240, U.S. Patent NO. 5,741,253, which is a continuation application of Serial No. 07/698,674, now abandoned, which is a divisional application of Serial No. 07/205,935, now U.S. Patent No. 5,015,247.

Applicant brings to the Examiner's attention that the '247 patent is the subject of litigation in the United States District Court for the Central District of California, Western Division, Civil Action No. 95-0258RG, hereinafter referred to as Litigation 1. The claims of the '247 patent are directed to a fusion implant.

The '253 patent is the subject of litigation in the United States District Court for the Western District of Tennessee, Civil Action No. 98-2369GA (JSG), hereinafter referred to as Litigation 2. The claims of the '253 patent are generally directed to a method for preparing adjacent vertebrae to receive an implant.

In Litigations 1 and 2, the Defendants have asserted that various references are pertinent to the issue of validity of the '247 and '253 patents respectively under 35 U.S.C. §§102 and 103. Applicant notes for the Examiner on the attached Form 1449 in the column for the Examiner's initials the references identified by Defendants in Litigations 1 and/or 2 by the designation "Lit. 1" and "Lit. 2".

This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that each or all of the listed documents are material or constitute "prior art." If the Examiner applies any of the documents as prior art against any claims in the application and applicant(s) determine(s) that the cited document(s) do not constitute "prior art" under United States law, applicant reserves the right to present to the office the relevant facts and law regarding the appropriate status of such documents.

Applicant further reserves the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

If there is any fee due in connection with the filing of this Statement, please charge the fee to Deposit Account No. 06-0916.

Respectfully submitted,

By:   
Thomas H. Martin  
Reg. No. 34,383

Date: November 23, 1998